

# **Exhibit 27**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

)  
) MDL No. 1456  
)  
)  
)

) Judge Patti B. Saris  
)  
)  
)

THIS DOCUMENT RELATES TO  
01-CV-12257-PBS and 01-CV-339

**TRIAL OF CLASSES 2 & 3 CLAIMS**

**AFFIDAVIT OF CHRISTOF MARRE  
SUBMITTED AS DIRECT TESTIMONY IN CASE-IN-CHIEF  
OF DEFENDANTS BMS AND OTN IN TRIAL OF CLASSES 2 & 3 CLAIMS**

STATE OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF MIDDLESEX )

CHRISTOF MARRE, being duly sworn, deposes and says:

1. I am a former marketing director for the oncology division of Bristol-Myers Squibb Company ("BMS"). I submit this affidavit based on personal knowledge and files in the possession of Bristol-Myers Squibb as direct testimony in the case-in-chief of BMS and its former subsidiary, Oncology Therapeutics Network Corporation ("OTN").

2. I graduated from the London School of Economics in 1993 with a Masters of Science in Economics. After school, I joined Monitor Company, a management consulting firm in London. In 1995, I began working for the Boston Consulting Group, another such consulting firm in Germany.

no reason to depart from what I understood to be the industry practice of keeping its list price in place after a drug went generic.

10. I am familiar with the term Average Wholesale Price or “AWP” as a published price that is sometimes used by Medicare and other drug reimbursers. My understanding is that the published AWP has historically reflected a mark-up of 20%-25% over the list price at which BMS or a competitor sells to a wholesaler. I believe that competition in the United States at the wholesale level is such that the wholesale-to-retail margin is in fact more like 1% to 3%. Nevertheless, industry publications have kept the historic mark-up factor. I do not know the reasons why the publications have done this, but I believe that this is very well known to anyone who follows the pharmaceutical industry.

11. I can tell the Court that neither I nor the customers with whom I contracted were interested in the published AWP (or, for that matter, the WLP/WAC) of the BMS products compared to those of our generic competitors when we engaged in negotiations. The relevant concerns to me and my customers were the bid price at which the competitor was willing to sell to the generic and whether or not BMS was interested in meeting or beating that price.

12. AWP and WLP/WAC were also irrelevant to my considerations of “floor prices” to OTN. Again, the issue was competition: at what price were other specialty distributors offering the generic equivalent of the BMS drug to the target market, the office-based oncologists. BMS did not “drive” the market price down to gain market share compared to competitors; rather, BMS preferred to lower its floor only if necessary to match the competition. Where possible, we instructed OTN to sell above the floor and as close to list as negotiations with a customer would allow.

# Exhibit 28

John F. Akscin

HIGHLY CONFIDENTIAL  
New York, NY

August 11, 2005

Page 1

HIGHLY CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X

In Re: PHARMACEUTICAL )

INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456

PRICE LITIGATION ) CIVIL ACTION NO.

) 01-CV-12257-PBS )

-----)

THIS DOCUMENT RELATES TO )

ALL ACTIONS )

-----X

DEPOSITION OF JOHN F. AKSCIN

New York, New York

Thursday, August 11, 2005

9:53 a.m.

Reported by:

Frank J. Bas, RPR

Henderson Legal Services  
(202) 220-4158

73685fa1-6e65-4bac-a4e4-637042b5eb9e

John F. Akscin

HIGHLY CONFIDENTIAL  
New York, NY

August 11, 2005

Page 26

1 couldn't specifically state that.  
 2 Q. Okay. What about -- taking you back  
 3 to your testimony about KRJ providing training  
 4 to OTN employees.  
 5 A. Mm-hmm.  
 6 Q. In the course of that training, was  
 7 AWP ever discussed?  
 8 A. I believe so.  
 9 Q. And in what context?  
 10 A. In the context of very high level of  
 11 how office based oncology practices are  
 12 reimbursed in their environment.  
 13 Q. Until recently oncology based  
 14 practices reimbursed under Medicare based on an  
 15 AWP benchmark, correct?  
 16 A. To my knowledge, that's correct.  
 17 Q. And that was 95 percent of AWP,  
 18 right?  
 19 A. As the history developed, yes, at  
 20 one time.  
 21 Q. And many insurers reimburse for  
 22 chemotherapy drugs based on AWP; is that

Page 27

1 correct?  
 2 A. I would say a number of them do.  
 3 Q. When you say a number, can you  
 4 quantify that, in terms of majority or minority?  
 5 A. I would say a majority of private  
 6 payers, outside the Medicare system.  
 7 Q. And has that been your observation  
 8 since you worked at OTN?  
 9 A. Yes.  
 10 Q. You also mentioned consultants named  
 11 ProStat Resources?  
 12 A. Correct.  
 13 Q. Is that spelled P-r-o-s-t-a-t?  
 14 A. Correct.  
 15 Q. And where are they located?  
 16 A. Kansas City, Missouri.  
 17 Q. Have they always been there?  
 18 A. To my knowledge.  
 19 Q. And what is the nature, if any, of  
 20 the consulting relationship between OTN and  
 21 ProStat?  
 22 A. There's no formal relationship.

Page 28

1 Q. Does ProStat offer consulting  
 2 services to OTN?  
 3 A. Under a formal relationship, they do  
 4 not.  
 5 Q. When you qualify it with "formal" --  
 6 A. Mm-hmm.  
 7 Q. -- what about informal?  
 8 A. Informally, yes.  
 9 Q. Can you please describe the nature  
 10 of the consulting?  
 11 A. Again from a very, very high level  
 12 relationship, general support in the area of  
 13 reimbursement assistance services to our  
 14 customer community.  
 15 MR. TRETTER: I think the question  
 16 was whether they provide any consulting  
 17 services to OTN as a corporate entity. Not  
 18 to the customer.  
 19 A. Okay. Again, informally --  
 20 formally they do not, to OTN. And informally,  
 21 high-level services, as I described.  
 22 Q. So let me make sure I understand

Page 29

1 your testimony on this topic.  
 2 Has OTN engaged ProStat to consult  
 3 with OTN on specific projects?  
 4 A. No, they have not. To my knowledge  
 5 they have not.  
 6 Q. So is this a referral relationship,  
 7 then, that OTN will from time to time refer OBO  
 8 customers to ProStat for consulting purposes?  
 9 A. On occasion.  
 10 Q. And how often does that occur?  
 11 A. Infrequently.  
 12 Q. And is there a financial  
 13 relationship between ProStat and OTN, to your  
 14 knowledge?  
 15 A. There is not, that I know of.  
 16 Q. And can you recall some specific  
 17 instances in which OTN has referred customers to  
 18 ProStat?  
 19 A. No, I cannot.  
 20 Q. Have you personally referred anyone  
 21 to ProStat?  
 22 A. I have.

8 (Pages 26 to 29)

Henderson Legal Services  
(202) 220-4158

73685fa1-6e65-4bac-a4e4-637042b5eb9e

# Exhibit 29

Marsha Peterson

April 13, 2005

Seattle, WA

Page 1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----  
IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE )  
WHOLESALE PRICE ) MDL Docket No.  
LITIGATION ) Civil Action 01CV12257PBS  
)

-----  
Deposition Upon Oral Examination  
Of  
MARSHA PETERSON  
-----

April 13, 2005  
1301 Fifth Avenue, Suite 2900  
Seattle, Washington

JULIE C. OSWALD, CSR #299-06  
COURT REPORTER

Henderson Legal Services  
(202) 220-4158

8b69d7c4-c696-4390-882f-2c51bce0c399



Marsha Peterson

April 13, 2005

Seattle, WA

Page 114

1 do to reference for their business, so we as a company  
2 may have different -- whether it's a link on a web  
3 site or something else -- have areas where they can  
4 see what the AWP's are for business purposes.

5 Q. There is information within Lynx that shows  
6 AWP's?

7 A. Not Lynx. Lynx To OTN is our web site, and  
8 there are many different links -- L-I-N-K-S -- links  
9 within a web site that help to provide information to  
10 a customer. So AWP specifically, which would come  
11 from Red Book, is updated.

12 There is a section in our web site where they  
13 can go and get an AWP report that would literally show  
14 them what AWP is, and that's simply as a reference  
15 point.

16 Q. Would they access that through the Lynx To  
17 OTN web site?

18 A. Yes, they would get a report out of there,  
19 and that report is actually straight from Red Book.  
20 There is a little link up on top that says when it was  
21 updated.

22 Q. So OTN loads the information from Red Book?

Page 115

1 A. Its linked to our web site.

2 Q. Its linked?

3 A. Right, to our web site, and put into a report  
4 that our customer can print out. Actually in  
5 distribution that's very common practice to have it  
6 listed there just for reference sake.

7 Q. That's because the customers, they base their  
8 reimbursement on the AWP, correct?

9 A. Yes.

10 Q. And that's true in the Medicare context?

11 A. Yes, and private payers.

12 Q. Has that always been the case since you've  
13 been with OTN?

14 A. Yes.

15 Q. Are you familiar with the term "chargeback"?

16 A. Yes, I am.

17 Q. What does it mean?

18 A. Chargeback, what that is to me is that within  
19 a distributor, if -- let me go back.

20 Chargeback is when there is a contract  
21 between a manufacturer and whether its with a GP or  
22 wherever that contract lies, then OTN will buy the

Page 116

1 drug at whatever the price is from the manufacturer,  
2 and then there is a contract dollar amount. We sell  
3 it for whatever that contract dollar amount is, and  
4 the difference between those two is the chargeback  
5 that then is received back from the manufacturer to  
6 OTN.

7 Does that make sense?

8 Q. Okay. In that situation OTN does receive  
9 chargebacks?

10 A. Yes.

11 Q. You sell at the contract price?

12 A. We sell at the contract price or the contract  
13 minus whatever the price is, and then the manufacturer  
14 will make up the chargeback which is the difference  
15 between what they sold it to us for and what the  
16 contract price was.

17 Q. Is that very common? What I'm trying to get  
18 is an appreciation of the volume of sales that OTN  
19 makes that involve chargebacks.

20 A. You know, again, this is an evolution because  
21 originally, even when I started out, there weren't as  
22 many contracts as there are today. There are a lot

Page 117

1 more contracts today because the customers have  
2 mandated that from manufacturers. So obviously the  
3 more contracts you have the more chargebacks you end  
4 up having. It's not something that we particularly  
5 dictate. The contracts are between the manufacturer  
6 and the customer, actually. That's where the  
7 contracting happens.

8 Q. So it has become more common over time?

9 A. Yes, and its becoming a larger percentage of  
10 our business. Yes.

11 Q. Who within OTN handles that process?

12 A. We actually have a contracts and chargebacks  
13 department which is within the finance department.

14 Q. Does OTN ever pay chargebacks?

15 A. What do you mean?

16 MR. TRETTER: Objection to the form.

17 Q. Would there be any scenario under which OTN  
18 would sell a drug to a wholesaler?

19 A. No, not to my knowledge.

20 Q. How about another distributor, another  
21 competitor?

22 A. Do they do that?

30 (Pages 114 to 117)

Henderson Legal Services  
(202) 220-4158

8b69d7c4-c696-4390-882f-2c51bce0c399

# Exhibit 30

1/15/2003 Zahn, Richard W.

1/15/2003 Zahn, Richard W.

1 CAUSE NO. GV002327

2 THE STATE OF TEXAS ) IN THE DISTRICT COURT at and for the County of Travis, State of Texas

3 VEN-A-CARE OF THE ) FLORIDA KEYS, INC., )

4 Plaintiffs, )

5 VS. ) TRAVIS COUNTY, TEXAS

6 DEY, INC.; ROXANE ) LABORATORIES, INC.; HARRICK )

7 PHARMACEUTICALS CORPORATION; ) SCHERING-PLOUGH CORPORATION; )

8 SCHERING CORPORATION; ) LIPHA, S.A.; MERCK-LIPHA, S.A.; )

9 MERCK, KGAA; AND EMD ) PHARMACEUTICALS, INC., )

10 Defendants. ) 53RD JUDICIAL DISTRICT

11 ..... ORAL AND V

12 RICHARD W. ZAHN

13 JANUARY 15TH, 2003

14

15 .....

16 ORAL AND VIDEOTAPED DEPOSITION OF

17 RICHARD W. ZAHN, produced as a witness at the instance

18 of the State of Texas and duly sworn, was taken in the

19 above-styled and numbered cause on the 15th of

20 January, 2003, from 9:10 a.m. to 4:55 p.m., before

21 Debra L. Sletten, CSR in and for the State of Texas,

22 reported by machine shorthand, at McCarter & English,

23 4 Gateway Center, 100 Mulberry Street, Newark,

24 New Jersey, pursuant to the Texas Rules of Civil

1

1 Procedure and the provisions as previously set forth.

2 A P P E A R A N C E S

3

4 FOR THE PLAINTIFF:

5 MR. PATRICK J. O'CONNELL, MS. SUSAN J. MILLER

6 Office of the Attorney General State of Texas

7 Post Office Box 12548 Austin, Texas 78711-2548

8 FOR THE RELATOR, VEN-A-CARE OF THE FLORIDA KEYS, INC.:

9 MR. JAMES JOSEPH BREEN

10 The Breen Law Firm, P.A. P.O. Box 297470

11 Pembroke Pines, Florida 33029-7470

12 - and -

13 MR. JARRETT ANDERSON Attorney at Law

14 2411 Hartford Road Austin, Texas 78703

15 FOR DEFENDANT DEY, INC.:

16 MS. LEILA R. PITTAWAY

17 Coudert Brothers, L.L.P. 114 Avenue of the Americas

18 New York, New York 10036-7703

19 FOR DEFENDANT ROXANE LABORATORIES, INC.:

20 MR. R. ERIC HAGENSWOLD Scott, Douglass & McConico,

21 One American Center, Fifteenth Floor 600 Congress Av

22 Austin, Texas 78701

23 FOR DEFENDANT HARRICK PHARMACEUTICALS CORPORATION:

24 MR. C. MICHAEL MOORE Locke Litkeoff & Associates, P.C.

2

1/15/2003 Zahn, Richard W.

1/15/2003 Zahn, Richard W.

1 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201-67

2

3 FOR THE DEFENDANT, SCHERING-PLOUGH CORPORATION:

4 MR. CARLTON E. WESSEL Schering-Plough Corporation

5 Law Department 2000 Gallop Hill Road

6 Kenilworth, New Jersey 07033

7 ALSO PRESENT:

8 Mr. John Maloy Lockwood, M.D. Mr. Lewis Chon, Videog

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

3

1

2

3

4 I N D E X

5

6 WITNESS: RICHARD W. ZAHN

7 EXAMINATION PAGE

8 By Ms. Miller . . . . . 7 By Mr. Breen. . . . .

9 By Ms. Miller . . . . . 254 By Mr. Breen. . . . .

10 EXHIBITS

11 NO. DESCRIPTION PAGE

12 600 . . . . . 115

13 "Schering/Harrick Albuterol Inhaler Action Plan"

14 601 . . . . . 130

15 "Modeling Assumptions"

16 602 . . . . . 132 Memo from Zahn & De

17 1-4-93, Forwarding "Managed Care Trends and Legislative Issu

18 Strategy"

19 603 . . . . . 136 "Schering Laborator

20 Strategic Plan"

21 604 . . . . . 139 File Folder Titled

22 in Generic Task Force Slides"

23 605 . . . . . 139 "Merck Flexeril Rev

24 1988-1992"

HIGHLY CONFIDENTIAL  
SPW0039584

4

1/15/2003 Zahn, Richard W.

1 Q. (BY MR. BREEN) Well, you report ANPs,  
2 correct?  
3 A. Yes.  
4 Q. You've testified to that?  
5 A. Yes.  
6 Q. All right. And -- and you know generally  
7 that those ANPs may be used by third-party payers in  
8 calculating reimbursement?  
9 A. Yes.  
10 Q. All right. So have you ever been aware that  
11 the reporting that your companies do for AMP -- about  
12 ANPs may have an effect upon the amount of profit the  
13 pharmacist can make when they dispense your companies'  
14 drugs?  
15 MR. MOORE: Objection, form.  
16 THE WITNESS: I don't -- AMP can be a  
17 reference to show relative differences or similarities  
18 among drugs. AMP can be a reference for certain third  
19 parties to establish a payment formula that they  
20 develop and then disseminate to their contractors. So  
21 relative to that, AMP has a role in terms of not only  
22 relativity but also in terms of how, you know, someone  
23 may reimburse someone.  
24 Q. (BY MR. BREEN) So you understood, then, that

173

1/15/2003 Zahn, Richard W.

1 ANPs could have an effect upon the amount of profit a  
2 pharmacist could make dispensing your drugs?  
3 MR. MOORE: Objection, form.  
4 THE WITNESS: I guess I never thought  
5 about it as a profit. I know it's in the  
6 reimbursement mix, yes.  
7 Q. (BY MR. BREEN) Well, if we look at --  
8 A. Profit --  
9 Q. I'm sorry. I didn't mean --  
10 A. Looking at the pharmacy profits, you know,  
11 their costs and their out-of-pocket structures, I mean  
12 a lot of other things, so I guess -- but AMP has  
13 that -- is a relative term.  
14 Q. Okay.  
15 A. Right.  
16 Q. Okay. And in -- okay.  
17 How long have you been aware of that,  
18 that AMP has a -- an impact upon the pharmacist's  
19 profit?  
20 MR. MOORE: Okay. I'm going to object  
21 to form. It's a mischaracterization of his prior  
22 testimony.  
23 Q. (BY MR. BREEN) How long have you been aware  
24 of that?

174

1/15/2003 Zahn, Richard W.

1 MR. MOORE: Same objection.  
2 THE WITNESS: I'm not sure that I've  
3 been aware that it was a profit -- I mean I was aware  
4 of AMP when I was trained as a sales rep 30 years  
5 ago --  
6 MR. BREEN: Right.  
7 THE WITNESS: -- and I was just told,  
8 "Here's what it is." Nobody pays it. It's a relative  
9 document. It's a relative -- maybe at some time it  
10 meant average wholesale price, but today it's just a  
11 reference guide that historically has been used. So I  
12 mean I knew AMP was this concept of relativity  
13 30 years ago. When did I realize it came into -- I  
14 don't know. I mean somewhere along the line.  
15 Q. (BY MR. BREEN) Well, why does your company  
16 continue to report ANPs?  
17 A. Well, as I mentioned before, sometimes we're  
18 requested to, as the State of Texas Medicaid  
19 application for Foradil asked us to put in AMP. I  
20 don't know why they ask. We -- you know, and in the  
21 past -- we are challenging that. I mean I don't know  
22 why we do that. If we're asked -- it's a relative  
23 tool. I mean other people still refer to them, but we  
24 don't, you know, view that as a -- an issue that we

175

1/15/2003 Zahn, Richard W.

1 particularly crack.  
2 Q. Why do you keep --  
3 A. It's historical. Sorry.  
4 Q. Why do you keep reporting it to First  
5 DataBank, AMP?  
6 A. You know, I'm not sure how we do that. I do  
7 know recently, though, we told them that they were  
8 misrepresenting it, that they arbitrarily took our  
9 ANPs up, just took them up. And we said, "Hey, you --  
10 what are you doing? That's not our number. We have  
11 no clue why you're doing this." And we informed them  
12 of that. They just took it up.  
13 Historically -- historically everyone  
14 knew that AMP was a relative comparator. I mean it  
15 was just a common knowledge that it was 20 percent.  
16 And I -- to tell you the truth, I can't remember  
17 whether you take your selling price and divide by .833  
18 or you take the price and multiply it by .8, but  
19 either way you get to the same number.  
20 Q. Right.  
21 A. And so there was a 20 percent margin or  
22 difference between an AMP and a standard, you know,  
23 shipment cost. That was standard.  
24 Q. Shipment cost to who?

HIGHLY CONFIDENTIAL  
SPW0039627

176

# Exhibit 31

Debra Kane

Highly Confidential  
Kenilworth, NJ

June 15, 2004

1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 ORIGINAL

4 IN RE: PHARMACEUTICAL :

5 INDUSTRY AVERAGE :

6 WHOLESALE PRICE :

MDL No. 1456

7 LITIGATION :

8 - - - - - : No.

9 This Document Relates to : 01-CV-12257-PBS

10 All Actions :

11 - - - - -

12 HIGHLY CONFIDENTIAL

13 ATTORNEYS' EYES ONLY

14 JUNE 15, 2004

15 Deposition of DEBRA KANE, held at  
16 the offices of Schering-Plough Corporation, 2000  
17 Galloping Hill Road, Kenilworth, New Jersey 07033,  
18 pursuant to 30(b)(6) notices, before JANINE A.  
19 CERRETO, a Certified Shorthand Reporter and Notary  
20 Public of the State of New Jersey.

21

22

Debra Kane

Highly Confidential  
Kenilworth, NJ

June 15, 2004

34

1 A. An hour, hour and a half.

2 Q. Nosey lawyer questions. Let's  
3 start with area of inquiry No. 1 and have you read  
4 that to yourself and let me know when you are  
5 done.

6 A. Okay.

7 Q. What is your understanding of the  
8 phrase average wholesale price?

9 A. It is a price that is used for  
10 reimbursement purposes, there is considerable  
11 controversy around.

12 Q. That's an understatement?

13 A. AWP.

14 Q. When did you first become familiar  
15 with the concept?

16 A. A long time ago.

17 Q. It is something that you have  
18 worked with?

19 A. Yes. Yes. Uh-huh.

20 Q. And other than a price that is used  
21 for reimbursement purposes, is there a more  
22 specific definition that you are aware of within

# Exhibit 32



*Schering*

Schering Laboratories

**CONFIDENTIAL**

Schering-Plough Corporation  
2000 Galloping Hill Road  
Kenilworth, New Jersey 07033  
Telephone (908) 298-4000

August 12, 1999

Honorable Thomas Bliley  
Chairman  
U.S. House of Representatives  
Committee on Commerce  
Room 2125  
Rayburn House Office Building  
Washington, DC 20515-6115

RE: Letter dated July 19, 1999 Requesting Information  
Concerning the Pricing for Albuterol Sulfate .083%

Dear Mr. Bliley:

This is in response to the letter dated July 19, 1999 from the House Committee on Commerce (the "Committee") requesting certain information from Schering-Plough Corporation ("Schering-Plough") concerning pricing for albuterol sulfate solution 0.083%.

Request No. 1: Please provide all definitions of AWP used by your company since January 1, 1996 for the purpose of determining the reimbursement price for Medicare-covered drugs, and all records relating to those definitions. In particular, please provide the specific definitions you apply to the terms "average" and "wholesale".

Response to Request No. 1: The MCR Glossary of Terms used by Schering-Plough Labs Medicaid Administration (dated May 4<sup>th</sup> 1993) contains the following description with respect to AWP:

"AWP Average Wholesale Price - The composite wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in either the Red Book, Blue Book (First Data Bank), or other pricing sources."

Schering-Plough does not apply any particular definition of AWP "for the purpose of determining the reimbursement price for Medicare-covered drugs." Similarly, Schering-Plough does not apply any particular definition for the terms "average" or "wholesale." Schering-Plough does provide to HCFA on a quarterly basis both its Best Price and Average Manufacturer's Price ("AMP") for albuterol sulfate .083%. Best Price is the single lowest price at which a covered outpatient single source or innovator multi-source drug is sold

HIGHLY CONFIDENTIAL

Plaintiffs' Exhibit

809

01-12257-PBS

EXHIBIT 83

WIT: Weintraub

DATE: 9-22-06

Cynthia Vohken

RGX 0315084

# Exhibit 33

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In Re: )  
PHARMACEUTICAL INDUSTRY ) CA No. 01-12257-PBS  
AVERAGE WHOLESALE PRICE ) MDL No. 1456  
LITIGATION ) Pages 18-1 - 18-151

BENCH TRIAL - DAY EIGHTEEN

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
December 12, 2006, 9:15 a.m.

LEE A. MARZILLI and TIMOTHY J. WILLETTE  
OFFICIAL COURT REPORTERS  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617) 345-6787

Page 22

1 by the industry or the government as a benchmark for  
2 reimbursement?

3 THE WITNESS: Vaguely. I mean, we just didn't get  
4 involved in reimbursement. Reimbursement was not our issue.  
5 We sold the product.

6 Q. Mr. Weintraub --

7 THE WITNESS: In all honesty, your Honor, I don't  
8 mean to be disrespectful, but we just never got involved in  
9 reimbursement. That was not our issue. Reimbursement was a  
10 matter between the government and the people who supplied  
11 product to the patient. We just sold the product. We  
12 never -- reimbursement issues just were not our focus because  
13 we never achieved anything with reimbursement. We never got  
14 any part of the reimbursement. We just sold product.

15 THE COURT: It wasn't part of your radar screen?

16 THE WITNESS: No.

17 Q. Now, with respect to AWP's, Mr. Weintraub, from the time  
18 you started in '93, did you ever at any time raise the AWP on  
19 the 3 ml .083 percent solution?

20 A. No.

21 Q. You never raised it. Did you lower it at one time?

22 A. Yes.

23 Q. Would you explain that, please.

24 A. When I came into Warrick, the albuterol sulfate solution  
25 had already been marketed. I did not set the AWP's for the

Page 23

1 albuterol sulfate solution. We had two sizes on the market,  
2 one a smaller package of either 25 or 30 and one a package of  
3 60.

4 Q. Is this a 25 package?

5 A. Yes.

6 Q. There would be just a bigger package of 60, correct?

7 A. There would be a bigger package of 60. The AWP for the  
8 60s had been set at one level, so that the unit price was, I  
9 think, \$1.24, as I remember it, and the 25 or 30 package had  
10 a unit price of \$1.21. I thought that was kind of silly,  
11 inconsistent, because the unit product was the same in either  
12 package. And I lowered the price for the package of 60 so  
13 that it came down to \$1.21 to be consistent on both package  
14 sizes.

15 Q. Okay. And after 1995, the 20 ml bottle, were there  
16 any -- you did raise the AWP on the 20 ml twice in 1995,  
17 correct?

18 A. I did.

19 Q. And that was because there were some actual price  
20 increases?

21 A. Yes.

22 Q. After 1995, did you ever raise the AWP on the 20 ml  
23 again?

24 A. No.

25 THE COURT: So explain that again to me. So what

Page 24

1 did you raise?

2 THE WITNESS: I raised the 20 ml product.

3 THE COURT: But why?

4 THE WITNESS: There was a company -- we had one  
5 other competitor in the market. When we came into the market  
6 with this product, it was at one price level. The price had  
7 constantly deteriorated. When the other company was forced  
8 off the market because of the fact that its product was  
9 contaminated, we were the only ones on the market, and I  
10 raised the price on the 20 ml so that I could -- the  
11 opportunity was there, since there was no other competition,  
12 in all honesty. And, secondly of all, it helped us recoup  
13 the downward spiral, so to speak, that occurred when the  
14 competition was in place.

15 THE COURT: I understand why you'd raise the list  
16 price or the WAC. Why would you then raise the AWP?

17 THE WITNESS: Well, I did that because I came out  
18 of the brand side of the business. On the brand side of the  
19 business, whenever you raised the direct price of the  
20 product, you'd raise the AWP in proportion. Again, I had  
21 been forty years on the brand side of the business, and I  
22 automatically, it's conservative to say, had taken the price  
23 of the product up uniformly across the country; and with our  
24 accounts, I raised the price of the AWP in accordance with  
25 the same percentage that I raised the direct price of the

Page 25

1 product.

2 THE COURT: Why did you always raise it on the  
3 brand side?

4 THE WITNESS: Brand products tend to go up in  
5 price. I'm not talking about the albuterol solution. I'm  
6 talking about brands overall of the forty years, brand prices  
7 tend to rise in price. That's just a fact of life.

8 THE COURT: But why would you raise the AWP on the  
9 branded side?

10 THE WITNESS: When you raise the AWP, the margins  
11 on the brand side are set in such a way that the direct  
12 price -- let's say a price is 83 cents on a brand product and  
13 you set an AWP of \$1 on it. Now, if you take the price 10 or  
14 12 percent up on the direct price side, it's going to come  
15 very close to the AWP. There's no differential there, so to  
16 speak. You don't want to raise the direct price to the point  
17 where it's at the AWP. You have to give some kind of margin  
18 to the distributor to sell a product. So you'd raise the  
19 price of the AWP in proportion to your direct price rise. Am  
20 I making myself clear?

21 THE COURT: Did you understand at that point that  
22 the reimbursement would go up that the government would have  
23 to pay?

24 THE WITNESS: Again, we weren't focused on  
25 reimbursement. We were focused on selling --

<p style="text-align: right;">Page 26</p> <p>1 THE COURT: Did you know that?</p> <p>2 THE WITNESS: Did I know that? Well, it seemed if</p> <p>3 you raised the price of the product, then you would</p> <p>4 automatically raise the price of reimbursements.</p> <p>5 THE COURT: Did you know that Medicare</p> <p>6 beneficiaries would have to pay 20 percent of the increase?</p> <p>7 THE WITNESS: Again, I wasn't focused on that, your</p> <p>8 Honor,</p> <p>9 Q. From the brand side, Mr. Weintraub, just to finish this,</p> <p>10 this was not something that just Schering did? Was this an</p> <p>11 industrywide convention or practice was that when, on the</p> <p>12 brand side, when the price went up, the AWP's went up in a</p> <p>13 proportional amount?</p> <p>14 A. That's through the entire industry.</p> <p>15 Q. The entire industry?</p> <p>16 A. Yes.</p> <p>17 Q. Every company?</p> <p>18 A. Yes, yes.</p> <p>19 Q. Okay. Now, I think I covered this, but we got off a</p> <p>20 little bit. On the 20 ml, after those 95 changes you just</p> <p>21 described to Judge Saris, did you ever raise the AWP again on</p> <p>22 it after that?</p> <p>23 A. No.</p> <p>24 Q. Okay. I want to talk about Warrick's marketing</p> <p>25 practices. Did Warrick sell or attempt to sell its generic</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. BERMAN: Excuse me. It mischaracterizes the</p> <p>2 contracts. They were HMO Blue.</p> <p>3 Q. You describe them, Mr. Weintraub. What are they?</p> <p>4 A. It's a contract between Warrick and Blue Cross and Blue</p> <p>5 Shield of Massachusetts to provide to Blue Cross and Blue</p> <p>6 Shield of Massachusetts certain albuterol sulfate products at</p> <p>7 a certain price, and those products would be delivered</p> <p>8 through a wholesaler.</p> <p>9 Q. And are these the market prices, the discounted prices?</p> <p>10 A. It appeared to me that these would be discounted prices.</p> <p>11 Q. And these are true and correct copies of those</p> <p>12 contracts, to the best of your knowledge?</p> <p>13 A. To the best of my knowledge.</p> <p>14 MR. MOORE: Your Honor, we would offer 2904, 2905,</p> <p>15 and 2906.</p> <p>16 MR. BERMAN: No objection.</p> <p>17 (Exhibits 2904, 2905, and 2906 received in</p> <p>18 evidence.)</p> <p>19 MR. MOORE: I pass the witness, your Honor.</p> <p>20 THE COURT: Excuse me?</p> <p>21 MR. MOORE: I pass the witness. I'm done.</p> <p>22 THE COURT: That must be a term from somewhere.</p> <p>23 MR. MOORE: Everybody does it a little differently.</p> <p>24 THE COURT: Where are you from?</p> <p>25 MR. MOORE: Dallas, Texas.</p>
<p style="text-align: right;">Page 27</p> <p>1 drugs by discussing spread, AWP's, or Medicare reimbursements</p> <p>2 with Warrick customers?</p> <p>3 A. No.</p> <p>4 Q. When you sold to these national central buyers, did you</p> <p>5 know who they were going to sell to or at what price?</p> <p>6 A. No.</p> <p>7 Q. When you sold to your national buying customers, did you</p> <p>8 know what third-party payor, private or public, might</p> <p>9 reimburse for the drug, if at all?</p> <p>10 A. No.</p> <p>11 Q. Did Warrick provide customers with written sales</p> <p>12 material or calculations comparing Warrick's product with</p> <p>13 competitors' products based upon spreads between acquisition</p> <p>14 cost and AWP?</p> <p>15 A. No.</p> <p>16 Q. Now, switching to another topic -- and I'm almost</p> <p>17 through, your Honor, just about a minute -- in the notebook</p> <p>18 that I've handed you, the white notebook, under Tabs 2, 3,</p> <p>19 and 4 are Defendants' Exhibit 2904, 2906, and 2905. Have you</p> <p>20 reviewed these, Mr. Weintraub, these exhibits?</p> <p>21 A. Yes.</p> <p>22 Q. These are contracts between Warrick and Blue Cross and</p> <p>23 Blue Shield of Massachusetts for the two products we've been</p> <p>24 looking at?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 29</p> <p>1 THE COURT: All right. It must have to do with</p> <p>2 the --</p> <p>3 MR. MOORE: It's like a forward pass, yes. Roger</p> <p>4 Staubach started that.</p> <p>5 THE COURT: Now, what do they say in Seattle, you</p> <p>6 caught 'em?</p> <p>7 (Laughter.)</p> <p>8 MR. BERMAN: I'll accept the pass, your Honor.</p> <p>9 CROSS-EXAMINATION BY MR. BERMAN:</p> <p>10 Q. Good morning, Mr. Weintraub.</p> <p>11 A. Good morning.</p> <p>12 Q. Let's take the topic you were talking about which was</p> <p>13 your establishment of the first AWP for Warrick, okay? And</p> <p>14 I'm going to ask you this: At the time that you were</p> <p>15 deciding what the AWP would be, you understood, did you not,</p> <p>16 that in order for Warrick's products to be reimbursed, for</p> <p>17 third parties to be able to seek reimbursement, that you</p> <p>18 needed to list an AWP, correct?</p> <p>19 A. That is correct, to be listed as a generic, that was our</p> <p>20 thrust.</p> <p>21 Q. And so you contacted First Databank, and you came away</p> <p>22 with the understanding that in order for your drug to be</p> <p>23 listed as a generic, it needed to have a price 10 to</p> <p>24 20 percent below the branded product, correct?</p> <p>25 A. That is correct.</p>

# Exhibit 34

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALÉ PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

*State of Montana v. Abbott Labs., Inc., et al.*,  
D. Mont. Cause No. CV-02-09-H-DWM

**DEFENDANT ABBOTT LABORATORIES' ANSWER AND DEFENSES TO STATE OF  
MONTANA'S SECOND AMENDED COMPLAINT**

Defendant Abbott Laboratories ("Abbott") hereby responds to the State of Montana's Second Amended Complaint (the "Complaint") in corresponding numbered paragraphs as follows:

**Preface**

The Complaint improperly and repetitively refers to Abbott and certain other defendants and third parties on a collective basis, failing to plead with requisite particularity allegations against Abbott or other defendants or third parties. Intentionally ambiguous pleading is improper and insufficient to apprise Abbott in any meaningful sense of the allegations asserted against it. Abbott nevertheless attempts to respond to Plaintiff's allegations to the extent possible under the circumstances. In answering the Complaint, Abbott responds only for itself, even when Plaintiff's allegations refer to alleged conduct by Abbott and other persons or entities. To the extent the allegations in the Complaint refer to the knowledge, conduct or actions of persons,

These comments and objections are incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

I.

1. Abbott admits that Plaintiff seeks to bring this action as alleged in Paragraph 1 of the Complaint. Abbott denies that Plaintiff is entitled to maintain this action in the manner alleged. Abbott denies the remaining allegations in Paragraph 1 of the Complaint.

2. To the extent the allegations in Paragraph 2 of the Complaint refer to statutory or regulatory programs, the statutes, regulations and other sources regarding those programs establish their contents, and any characterizations thereof are denied. Abbott denies the remaining allegations in Paragraph 2 of the Complaint.

3-4. The allegations in Paragraphs 3 and 4 of the Complaint contain Plaintiff's generalizations and self-serving conclusions to which no response is required. To the extent a response is required, Abbott denies the allegations in Paragraphs 3 and 4 of the Complaint and strict proof is demanded thereof.

5. Abbott admits that Congress mandated that Medicare Part B reimbursement be based, in part, in certain circumstances, on AWP and that certain Medicaid programs and private insurance companies reimburse drugs based, in part, in certain circumstances, on AWP. Abbott denies the remaining allegations in Paragraph 5 of the Complaint.

6-10. Denied.

11-12. The Court dismissed Plaintiff's "Best Price" claims in its Order dated June 10, 2004. Accordingly, Abbott does not respond to Paragraphs 11 through 12 of the Complaint.

13-17. Denied.



# Exhibit 35

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	x
	:
In Re: PHARMACEUTICAL INDUSTRY	: MDL NO. 1456
AVERAGE WHOLESALE PRICE	:
LITIGATION	: Master File No. 01-CV-12257-PBS
	:
THIS DOCUMENT RELATES TO:	: Judge Patti B. Saris
( <i>State of Montana v. Abbott Labs., Inc., et al.</i> , 02-	:
CV-12084-PBS)	:
_____	x

**ANSWER AND DEFENSES OF DEFENDANT ASTRAZENECA  
PHARMACEUTICALS LP AND ZENECA INC. TO THE STATE OF  
MONTANA'S SECOND AMENDED COMPLAINT**

Defendants AstraZeneca Pharmaceuticals LP ("AZPLP") and Zeneca Inc.<sup>1</sup>  
(collectively "AstraZeneca"), through its undersigned counsel, answer the State of  
Montana's Second Amended Complaint (the "SAC") served via Verilaw on  
August 1, 2003, in the above-captioned action as follows:

**I. INTRODUCTION**

1. Admits that Plaintiff purports to bring this case as alleged in  
paragraph 1, but denies the allegations in paragraph 1, specifically denies the  
existence of or participation in an "Average Wholesale Price Inflation Scheme,"  
denies that there exists any basis in fact or law for the institution or maintenance  
of this action against AstraZeneca, and otherwise denies knowledge or

---

<sup>1</sup> The entity listed as AstraZeneca US does not exist. Although AstraZeneca PLC is  
referenced in the SAC, it is not named as a defendant.

information sufficient to form a belief as to the truth of the allegations in paragraph 1 as to the other parties.

2. Admits that AZPLP manufactures, sells, and/or distributes pharmaceutical products in the United States. To the extent the allegations in paragraph 2 refer to statutory or regulatory programs, the statutes, regulations, and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. AstraZeneca denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 as to the other parties.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3, except admits that the development of new drugs can benefit individuals.

4. Denies the allegations in paragraph 4 to the extent that they are directed at AstraZeneca, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 as to the other parties.

5. Denies the allegations in paragraph 5, except admits that some private and public drug reimbursement systems reimburse physicians and pharmacies based upon the AWP for some prescription drugs, as published and reported by various independent third-party publications, but denies the remaining allegations in paragraph 5 to the extent they are directed at AstraZeneca, and

# **Exhibit 36**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO  
*State of Montana v. American Home Products  
Corp., et al.,*  
D. Mont. Cause No. CV- 02-09-H-DWM

**AVENTIS PHARMACEUTICALS INC.'S ANSWER TO  
STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Defendant Aventis Pharmaceuticals Inc.<sup>1</sup> ("Aventis") hereby responds and answers the State of Montana's Second Amended Complaint (the "Complaint") as follows:

**Preface**

Prior to addressing the specific allegations of the numbered Paragraphs, Aventis states the following general objections and responses to the Complaint as a whole. The Complaint contains purported quotations from a number of sources, many of which are unidentified. If any of the quotations originate in documents protected by the attorney-client privilege, the work-product doctrine or the joint-defense privilege, Aventis reserves the right to assert such privileges, hereby moves to strike such references and demands return of any such documents that Plaintiff may have in its possession, custody or control. In answering allegations consisting of quotations, an admission that the material quoted was contained in a document or was uttered

<sup>1</sup> Plaintiff's description of "Aventis Group (Aventis, Pharma, Hoechst & Behring)" in the Complaint is inaccurate and misleading. This Answer is that of Aventis Pharmaceuticals Inc. in its own capacity and as the successor in interests to Hoechst Marion Roussel, Inc.

regulations and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. To the extent the allegations in Paragraph 2 of the Complaint are directed to persons, entities or defendants other than Aventis, Aventis is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies those allegations. Aventis denies the remaining allegations in Paragraph 2 of the Complaint that pertain to it.

3. The allegations in Paragraph 3 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 4 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

5. Aventis admits that some private and public drug reimbursement systems reimburse physicians and pharmacies based upon the AWP as published and reported by various compendia. Aventis denies the remaining allegations in Paragraph 5 of the Complaint that pertain to it.

6. Aventis admits that at one time it reported pricing information to various compendia, which may have considered that information when publishing AWP. Aventis denies the existence of, and its participation in, any "AWP Inflation Scheme" as alleged in Paragraph 6 of the Complaint. To the extent the allegations in Paragraph 6 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Aventis, Aventis is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations. To the extent the allegations of Paragraph 6 contain

legal arguments or conclusions of law, no answer is required and none is made. Aventis denies the remaining allegations in Paragraph 6 of the Complaint that pertain to it.

7. Aventis denies the existence of, and its participation in, any "AWP Inflation Scheme" as alleged in Paragraph 7 of the Complaint. To the extent the allegations in Paragraph 7 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Aventis, Aventis is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations. To the extent the allegations of Paragraph 7 contain legal arguments or conclusions of law, no answer is required and none is made. Aventis denies the remaining allegations in Paragraph 7 of the Complaint that pertain to it.

8. Aventis denies the allegations in Paragraph 8 of the Complaint that pertain to it. To the extent the allegations in Paragraph 8 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Aventis, Aventis is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.

9. Aventis denies the allegations in Paragraph 9 of the Complaint that pertain to it. To the extent the allegations in Paragraph 9 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Aventis, Aventis is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.

10. Aventis denies the allegations in Paragraph 10 of the Complaint that pertain to it. To the extent the allegations in Paragraph 10 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Aventis, Aventis is without knowledge or

162. Aventis admits that the reimbursement methodology for outpatient prescription drugs covered by the Montana Medicaid Program is set forth at Mont. Admin. R. 37.86.1101 *et seq.*, which is the best evidence of its content. To the extent the allegations rely on the “Prescription Drug Program” cited in the last sentence of Paragraph 162, Aventis avers that it is the best evidence of its content. Aventis denies that Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to Aventis.

163. Aventis admits it is aware that Medicaid beneficiaries are generally responsible to pay a co-payment. To the extent the allegations refer to statutes, regulations or other documents, those sources speak for themselves and are the best evidence of their contents. Any characterizations are denied. To the extent the allegations in Paragraph 163 set forth legal arguments or conclusions of law, no response is required and none is made. Aventis denies the remaining allegations in Paragraph 163 of the Complaint that pertain to it.

**VI. AWP PLAYS A CENTRAL ROLE IN ALL PRESCRIPTION  
DRUG REIMBURSEMENT SYSTEMS, AND THE  
TRUTHFUL REPORTING OF AWPS IS ESSENTIAL  
TO THE INTEGRITY OF THE MARKETPLACE**

164. Aventis admits that certain reimbursing entities have chosen AWP to play a role in various prescription drug reimbursement systems that operate in the United States. Aventis denies all other allegations set forth in Paragraph 164.

165. Upon information and belief, Aventis admits the allegations in the first two sentences of Paragraph 165 of the Complaint. Aventis denies all other allegations set forth in Paragraph 165.

166. Aventis admits that certain reimbursing entities have chosen AWP to play a role in various prescription drug reimbursement systems that operate in the United States. To the



# Exhibit 37

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO  
*State of Montana v. American Home Products  
Corp., et al.,*  
D. Mont. Cause No. CV- 02-09-H-DWM

**AVENTIS BEHRING LLC'S ANSWER TO  
STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Defendant Aventis Behring LLC<sup>1</sup> ("Behring") hereby responds and answers the State of Montana's Second Amended Complaint (the "Complaint") as follows:

**Preface**

Prior to addressing the specific allegations of the numbered Paragraphs, Behring states the following general objections and responses to the Complaint as a whole. The Complaint contains purported quotations from a number of sources, many of which are unidentified. If any of the quotations originate in documents protected by the attorney-client privilege, the work-product doctrine or the joint-defense privilege, Behring reserves the right to assert such privileges, hereby moves to strike such references and demands return of any such documents that Plaintiff may have in its possession, custody or control. In answering allegations consisting of quotations, an admission that the material quoted was contained in a document or was uttered

---

<sup>1</sup> Plaintiff's description of "Aventis Group (Aventis, Pharma, Hoechst & Behring)" in the Complaint is inaccurate and misleading. This Answer is that of Aventis Behring LLC only.

regulations and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. To the extent the allegations in Paragraph 2 of the Complaint are directed to persons, entities or defendants other than Behring, Behring is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies those allegations. Behring denies the remaining allegations in Paragraph 2 of the Complaint that pertain to it.

3. The allegations in Paragraph 3 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 4 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

5. Behring admits that some private and public drug reimbursement systems use AWP as published and reported by various compendia in developing their reimbursement methodologies for physicians and pharmacies. Behring denies the remaining allegations in Paragraph 5 of the Complaint that pertain to it.

6. Behring admits that it reported certain pricing information for its medicines to pharmaceutical industry pricing publications. Behring denies the existence of, and its participation in, any "AWP Inflation Scheme" as alleged in Paragraph 6 of the Complaint. To the extent the allegations in Paragraph 6 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Behring, Behring is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations. To the extent the allegations of Paragraph 6 contain legal arguments or

# Exhibit 38

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO  
State of Montana v. Abbott Labs. Inc., et al.  
Civil Action No.: 02-1284-PBS

**ANSWER OF BRISTOL-MYERS SQUIBB COMPANY, ONCOLOGY THERAPEUTICS  
NETWORK CORPORATION AND APOTHECON, INC. TO  
STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Defendants Bristol-Myers Squibb Company ("Bristol-Myers"), Oncology Therapeutics Network Corporation ("OTN"), and Apothecon, Inc. ("Apothecon") (Bristol-Myers, OTN and Apothecon are collectively referred to herein as the "BMS Group"),<sup>1</sup> respond to State of Montana's Second Amended Complaint, served via Verilaw on November 5, 2003, as follows:

**Preliminary Statement**

The Second Amended Complaint improperly refers to Bristol-Myers, OTN, and Apothecon, other Defendants and third parties on a collective basis, failing to plead with requisite particularity allegations against Bristol-Myers, OTN and/or Apothecon. This is insufficient to apprise BMS Group (let alone each separate entity) of the allegations asserted

---

<sup>1</sup> In this Answer, Bristol-Myers, OTN and Apothecon follow the convention of the Second Amended Complaint by referring to themselves collectively as the "BMS Group." By following the Second Amended Complaint in this manner, none of these Defendants concedes or admits that it is properly defined as a "Group" for any other purpose.

**Specific Responses**

1. BMS Group admits the State of Montana seeks to bring this action as alleged in Paragraph 1 of the Second Amended Complaint. BMS Group denies that Plaintiff is entitled to maintain this action in the manner alleged.

2. BMS Group admits that it is a manufacturer of pharmaceutical products. To the extent the allegations of Paragraph 2 refer to statutory or regulatory programs, the statutes, regulations and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. To the extent the allegations in Paragraph 2 of the Second Amended Complaint are directed to persons, entities or defendants other than BMS Group, BMS Group is without knowledge or information sufficient to form a belief as to the truth of the allegations. BMS Group denies the remaining allegations in Paragraph 2 of the Second Amended Complaint that pertain to it.

3. The allegations in Paragraph 3 of the Second Amended Complaint contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied.

4. BMS Group denies the allegations in Paragraph 4 of the Second Amended Complaint, except admits it has spent significant sums of money to research, develop and market new drugs.

5. BMS Group denies the allegations in Paragraph 5 of the Second Amended Complaint, except admits that it reports certain pricing information for its medicines to third-party publications, that Congress has mandated that Medicaid and Medicare Part B reimbursements be based, in part, upon AWP, and that AWP (often less a negotiated percentage discount) is sometimes used as a basis for reimbursement by private insurance companies and self-insured employers.

6-10. BMS Group denies the allegations in Paragraphs 6 through 10 of the Second Amended Complaint. To the extent the allegations in Paragraphs 6 through 10 of the Second Amended Complaint are directed to persons, entities or defendants other than BMS Group, BMS Group is without knowledge or information sufficient to form a belief as to the truth of the allegations.

11-12. The Court dismissed Plaintiff's Best Price claims against BMS Group in its Memorandum and Order dated June 10, 2004. Accordingly, no response is required to Paragraphs 11 and 12 of the Second Amended Complaint, and none is made.

13-14. The allegations in Paragraphs 13 through 14 of the Second Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, BMS Group denies the allegations in Paragraphs 13 through 14 of the Second Amended Complaint. To the extent the allegations in Paragraphs 13 through 14 of the Second Amended Complaint are directed to persons, entities or defendants other than BMS Group, BMS Group is without knowledge or information sufficient to form a belief as to the truth of the allegations.

15-18. BMS Group denies the allegations in Paragraphs 15 through 18 of the Second Amended Complaint, except it admits that Plaintiff seeks relief as alleged in Paragraph 18 of the Second Amended Complaint. To the extent the allegations in Paragraphs 15 through 18 of the Second Amended Complaint are directed to persons, entities or defendants other than BMS Group, BMS Group is without knowledge or information sufficient to form a belief as to the truth of the allegations.

19-20. BMS Group denies the allegations in Paragraphs 19 through 20 of the Second Amended Complaint.

Complaint refer to the knowledge, conduct or actions of persons or entities other than BMS Group, BMS Group is without knowledge or information sufficient to form a belief as to the truth of those allegations.

216-363. The allegations in Paragraphs 216 through 363 of the Second Amended Complaint are directed to other defendants and require no response from BMS Group. To the extent allegations in Paragraphs 216 through 363 of the Second Amended Complaint are deemed to include allegations against BMS Group, they are denied.

364-365. BMS Group denies the allegations in Paragraphs 364 and 365 of the Second Amended Complaint and states that specific drugs as to which Plaintiff seeks relief are selected by Plaintiff and do not require a response from BMS Group; to the extent that such a response is required, BMS Group denies that Plaintiff is entitled to a judgment or any relief.

366. BMS Group denies the allegations in Paragraph 366 of the Second Amended Complaint, except admits that it communicated with industry compendia concerning certain prices of its products. BMS Group further states that the document written by Denise Kaszuba and the BMS Group document (BMSAWP/0011246) cited in Paragraph 366 speak for themselves and are the best evidence of their contents. BMS Group denies the conclusions that Plaintiff draws from these documents.

367. BMS Group denies the allegations in Paragraph 367 of the Second Amended Complaint.

368. BMS Group denies the allegations in Paragraph 368 of the Second Amended Complaint that pertain to it and, to the extent the allegations in Paragraph 368 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than BMS Group, BMS Group is without knowledge or information sufficient to form a



# Exhibit 39



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO  
*State of Montana v. Abbott Labs, Inc., et al.*,  
D. Mont. Cause No. CV- 02-09-H-DWM

**FUJISAWA HEALTHCARE INC.'S AND FUJISAWA USA INC.'S  
ANSWER TO STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Defendants Fujisawa Healthcare, Inc. and Fujisawa USA, Inc. (collectively referred to as "Fujisawa"), for its Answer to the State of Montana's Second Amended Complaint (the "Complaint") as follows:

**Preface**

Prior to addressing the specific allegations of the numbered Paragraphs, Fujisawa states the following general objections and responses to the Complaint as a whole. The Complaint contains purported quotations from a number of sources, many of which are unidentified. If any of the quotations originate in documents protected by the attorney-client privilege, the work-product doctrine or the joint-defense privilege, Fujisawa reserves the right to assert such privileges, hereby moves to strike such references and demands return of any such documents that Plaintiff may have in its possession, custody or control. In answering allegations consisting of quotations, an admission that the material quoted was contained in a document or was uttered



regulations and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. To the extent the allegations in Paragraph 2 of the Complaint are directed to persons, entities or defendants other than Fujisawa, Fujisawa is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies those allegations. Fujisawa denies the remaining allegations in Paragraph 2 of the Complaint that pertain to it.

3. The allegations in Paragraph 3 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 4 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

5. Fujisawa admits that some private and public drug reimbursement systems reimburse physicians and pharmacies based upon the AWP as published and reported by various compendia. Fujisawa denies the remaining allegations in Paragraph 5 of the Complaint that pertain to it.

6. Fujisawa generally admits that, historically, the AWP's for Fujisawa's products published by various compendia were based upon pricing data provided by Fujisawa. Fujisawa denies the existence of, and its participation in, any "AWP Inflation Scheme" as alleged in Paragraph 6 of the Complaint. To the extent the allegations in Paragraph 6 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Fujisawa, Fujisawa is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations. To the extent the allegations of Paragraph 6



contain legal arguments or conclusions of law, no answer is required and none is made. Fujisawa denies the remaining allegations in Paragraph 6 of the Complaint that pertain to it.

7. Fujisawa denies the existence of, and its participation in, any "AWP Inflation Scheme" as alleged in Paragraph 7 of the Complaint. To the extent the allegations in Paragraph 7 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Fujisawa, Fujisawa is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations. To the extent the allegations of Paragraph 7 contain legal arguments or conclusions of law, no answer is required and none is made. Fujisawa denies the remaining allegations in Paragraph 7 of the Complaint that pertain to it.

8. Fujisawa denies the allegations in Paragraph 8 of the Complaint that pertain to it. To the extent the allegations in Paragraph 8 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Fujisawa, Fujisawa is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.

9. Fujisawa denies the allegations in Paragraph 9 of the Complaint that pertain to it. To the extent the allegations in Paragraph 9 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Fujisawa, Fujisawa is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.

10. Fujisawa denies the allegations in Paragraph 10 of the Complaint that pertain to it. To the extent the allegations in Paragraph 10 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Fujisawa, Fujisawa is without knowledge or



are denied. To the extent the allegations in Paragraph 159 set forth legal arguments or conclusions of law, no response is required and none is made.

160. Fujisawa generally admits the factual allegations set forth in Paragraph 160 and avers that to the extent the allegations refer to statutes, regulations or other documents, those sources speak for themselves and are the best evidence of their contents. Any characterizations are denied. Fujisawa avers that the "Detailed Case Studies" cited in Paragraph 160 of the Complaint is the best evidence of its contents. Fujisawa denies that Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to Fujisawa.

161. Fujisawa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 161 and, therefore, denies those allegations.

162. Fujisawa admits that the reimbursement methodology for outpatient prescription drugs covered by the Montana Medicaid Program is set forth at Mont. Admin. R. 37.86.1101 *et seq.*, which is the best evidence of its contents. To the extent the allegations rely on the "Prescription Drug Program" cited in the last sentence of Paragraph 162, Fujisawa avers that it is the best evidence of its contents. Fujisawa denies that Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to Fujisawa.

163. To the extent the allegations refer to statutes, regulations or other documents, those sources speak for themselves and are the best evidence of their contents. Any characterizations are denied. To the extent the allegations in Paragraph 163 set forth legal arguments or conclusions of law, no response is required and none is made. Fujisawa denies the remaining allegations in Paragraph 163 of the Complaint that pertain to it.



410-411. The allegations set forth in Paragraph 410-11 contain Plaintiff's characterization of the action. No response is required and none is made.

412. Fujisawa admits that it reported certain pricing information for its medicines to independently produced pricing publications. Fujisawa admits that it reported a suggested AWP for its medicines during a portion of that time. Fujisawa states that FJ-MDL 015152-015159 is the best evidence of its contents and denies that the conclusions Plaintiff draws from these documents are accurate. The remainder of the allegations of Paragraph 412 are denied

413. Fujisawa denies the allegations set forth in Paragraph 413 of the Complaint.

414. Fujisawa states that FJ-MDL 005687-88 is the best evidence of its contents and denies that the conclusions Plaintiff draws from these documents are accurate. The remainder of the allegations of Paragraph 414 are denied.

415. Fujisawa states that FJ-MDL 005668-69 is the best evidence of its contents and denies that the conclusions Plaintiff draws from these documents are accurate. The remainder of the allegations of Paragraph 415 are denied.

416. Fujisawa states that FJ-MDL 008346 is the best evidence of its contents and denies that the conclusions Plaintiff draws from these documents are accurate. Fujisawa denies the remainder of the allegations of Paragraph 416.

417. Fujisawa admits that it has produced documents in response to government subpoenas, and that it often sells its products at prices below AWP. Fujisawa denies the remaining allegations in Paragraph 417 of the Complaint that pertain to it.

418. Fujisawa states that FJ-MDL 13079-81 is the best evidence of its contents and denies that the conclusions Plaintiff draws from these documents are accurate. Fujisawa denies the remainder of the allegations of Paragraph 418.

# Exhibit 40



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO  
*State of Montana v. American Home Products  
Corp., et al.,*  
D. Mont. Cause No. CV- 02-09-H-DWM

**JOHNSON & JOHNSON, CENTOCOR, INC., JANSSEN PHARMACEUTICA  
PRODUCTS, L.P., MCNEIL-PPC, INC., AND ORTHO BIOTECH PRODUCTS L.P.'S  
ANSWER TO STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Defendants Johnson & Johnson ("J&J"), Centocor, Inc. ("Centocor"), Janssen  
Pharmaceutica Products, L.P. ("Janssen"), McNeil-PPC, Inc. ("McNeil-PPC"), Ortho Biotech  
Products, L.P., incorrectly sued as "Ortho Biotech" ("Ortho Biotech") (collectively the "J&J  
Defendants"), hereby responds and answers the State of Montana's Second Amended Complaint  
(the "Complaint") as follows:

**Preface**

Prior to addressing the specific allegations of the numbered Paragraphs, the J&J  
Defendants state the following general objections and responses to the Complaint as a whole.  
The Complaint contains purported quotations from a number of sources, many of which are  
unidentified. If any of the quotations originate in documents protected by the attorney-client  
privilege, the work-product doctrine or the joint-defense privilege, the J&J Defendants reserve  
the right to assert such privileges, hereby move to strike such references and demand return of





## **I. INTRODUCTION**

1. To the extent that the allegations set forth in Paragraph 1 contain Plaintiff's characterization of the action, no answer is required and none is made. The J&J Defendants deny the remaining allegations in Paragraph 1 of the Complaint that pertain to them.

2. Except for J&J, which is a holding company, the J&J Defendants admit that they manufacture pharmaceutical products. To the extent the allegations of this Paragraph refer to statutory or regulatory programs, the statutes, regulations and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. To the extent the allegations in Paragraph 2 of the Complaint are directed to persons, entities or defendants other than the J&J Defendants, the J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny those allegations. The J&J Defendants deny the remaining allegations in Paragraph 2 of the Complaint that pertain to them.

3. The allegations in Paragraph 3 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 4 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

5. The J&J Defendants admit that some private and public drug reimbursement systems reimburse physicians and pharmacies based upon the AWP as published and reported by various compendia. The J&J Defendants deny the remaining allegations in Paragraph 5 of the Complaint that pertain to them.

6. The J&J Defendants generally admit that the AWP's for the J&J Defendants' products published by various compendia were based upon information provided by the J&J



Defendants. The J&J Defendants deny the existence of, and their participation in, any "AWP Inflation Scheme" as alleged in Paragraph 6 of the Complaint. To the extent the allegations in Paragraph 6 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than the J&J Defendants, the J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, deny those allegations. To the extent the allegations of Paragraph 6 contain legal arguments or conclusions of law, no answer is required and none is made. The J&J Defendants deny the remaining allegations in Paragraph 6 of the Complaint that pertain to them.

7. The J&J Defendants deny the existence of, and their participation in, any "AWP Inflation Scheme" as alleged in Paragraph 7 of the Complaint. To the extent the allegations in Paragraph 7 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than the J&J Defendants, the J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, deny those allegations. To the extent the allegations of Paragraph 7 contain legal arguments or conclusions of law, no answer is required and none is made. The J&J Defendants deny the remaining allegations in Paragraph 7 of the Complaint that pertain to them.

8. The J&J Defendants deny the allegations in Paragraph 8 of the Complaint that pertain to them. To the extent the allegations in Paragraph 8 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than the J&J Defendants, the J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, deny those allegations.

9. The J&J Defendants deny the allegations in Paragraph 9 of the Complaint that pertain to them. To the extent the allegations in Paragraph 9 of the Complaint refer to the



that Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to the J&J Defendants. The J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, deny those allegations.

161. The J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 161 and, therefore, deny those allegations. The J&J Defendants aver that the "Detailed Case Studies" cited in Paragraph 160 of the Complaint is the best evidence of their contents. The J&J Defendants deny that Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to the J&J Defendants.

162. The J&J Defendants admit that the reimbursement methodology for outpatient prescription drugs covered by the Montana Medicaid Program is set forth at Mont. Admin. R. 37.86.1101 *et seq.*, which is the best evidence of their contents. To the extent the allegations rely on the "Prescription Drug Program" cited in the last sentence of Paragraph 162, the J&J Defendants aver that it is the best evidence of its contents. The J&J Defendants deny that Plaintiff has accurately characterized any alleged finding, opinion, statement or conclusion contained therein, or that such are applicable to the J&J Defendants.

163. The J&J Defendants admit they are aware that Medicaid beneficiaries are generally responsible, but not necessarily required, to pay a co-payment. To the extent the allegations refer to statutes, regulations or other documents, those sources speak for themselves and are the best evidence of their contents. Any characterizations are denied. To the extent the allegations in Paragraph 163 set forth legal arguments or conclusions of law, no response is



knowledge, conduct or actions of or benefits received by persons, entities or defendants other than the J&J Defendants, the J&J Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, deny those allegations.

216-480. The allegations in Paragraphs 216 through 480 of the Complaint are directed to another defendant and require no response from the J&J Defendants. To the extent allegations in Paragraphs 216 through 480 of the Complaint are deemed to include allegations against the J&J Defendants, they are denied.

481. The J&J Defendants deny the allegations set forth in Paragraph 481 of the Complaint.

482. The allegations set forth in Paragraph 482 contain Plaintiff's characterization of the action. No response is required and none is made.

483. The J&J Defendants admit that they reported certain information for its medicines to independently produced pricing publications and that the J&J Defendants were aware that the compendia considered the information that the J&J Defendants supplied.

484. The J&J Defendants deny the allegations set forth in Paragraph 484 of the Complaint.

485. The J&J Defendants state that the rebate agreement (J&J000599) cited in Paragraph 485 of the Complaint is the best evidence of its contents. The J&J Defendants deny that the conclusion drawn by Plaintiff from the alleged quotation from this document is accurate. The J&J Defendants deny the remaining allegations in Paragraph 485 of the Complaint that pertain to them.

486. The J&J Defendants deny the allegations set forth in Paragraph 486 of the Complaint.

# Exhibit 41

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	)	MDL No. 1456
THIS DOCUMENT RELATES TO	)	Civil Action No. 01-CV-12257 PBS
<i>State of Montana v. Abbott Labs., Inc., et al.,</i>	)	
D. Mont. Cause No. CV-02-09-H-DWM	)	Judge Patti B. Saris

**ANSWER OF DEFENDANT NOVARTIS PHARMACEUTICALS CORPORATION TO  
THE STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Defendant Novartis Pharmaceuticals Corporation ("Novartis"), for its Answer to the State of Montana's Second Amended Complaint (the "Complaint") in the captioned action, by its undersigned counsel, alleges upon knowledge as to itself, and upon information and belief as to all other matters, as follows:

**I. INTRODUCTION**

1. Admits as to the allegations set forth in numbered paragraph 1 of the Complaint that the State of Montana purports to bring this case on behalf of the State of Montana and persons residing in Montana but denies that there is any basis on which to permit it to do so.
2. Denies the allegations set forth in numbered paragraph 2 of the Complaint as to Novartis and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth, except admits that Novartis is or has been engaged in the business of manufacturing, marketing and selling prescription pharmaceuticals throughout the United States, including Montana.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in numbered paragraph 3 of the Complaint, except admits that the

development of new drugs can benefit Patients through better overall health, avoidance of more expensive surgical procedures, and, in some cases, longer life.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in numbered paragraph 4 of the Complaint, except denies as to Novartis the allegations of abuses and injury to Patients, the State and its Medicaid program.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in numbered paragraph 5 of the Complaint, except admits that certain drug reimbursement systems reimburse physicians and pharmacies for prescription drugs based upon AWP as published and reported by third party publications.

6. Denies the allegations set forth in numbered paragraph 6 of the Complaint as to Novartis and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

7. Denies the allegations set forth in numbered paragraph 7 of the Complaint as to Novartis and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

8. Denies the allegations set forth in numbered paragraph 8 of the Complaint as to Novartis and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

9. Denies the allegations set forth in numbered paragraph 9 of the Complaint as to Novartis and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

10. Denies the allegations set forth in numbered paragraph 10 of the Complaint.

# Exhibit 42





UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO  
*State of Montana v. American Home Products  
Corp., et al.,*  
D. Mont. Cause No. CV- 02-09-H-DWM

**PFIZER, INC.'S ANSWER TO STATE OF MONTANA'S  
SECOND AMENDED COMPLAINT**

Defendant Pfizer, Inc. ("Pfizer") hereby responds and answers the State of Montana's Second Amended Complaint (the "Complaint") as follows:

**Preface**

Prior to addressing the specific allegations of the numbered Paragraphs, Pfizer states the following general objections and responses to the Complaint as a whole. The Complaint contains purported quotations from a number of sources, many of which are unidentified. If any of the quotations originate in documents protected by the attorney-client privilege, the work-product doctrine or the joint-defense privilege, Pfizer reserves the right to assert such privileges, hereby moves to strike such references and demands return of any such documents that Plaintiff may have in its possession, custody or control. In answering allegations consisting of quotations, an admission that the material quoted was contained in a document or was uttered by the person or entity quoted shall not



2. Pfizer admits that it is a manufacturer of pharmaceutical products. To the extent the allegations of this Paragraph refer to statutory or regulatory programs, the statutes, regulations and other sources regarding those programs speak for themselves, and any characterizations thereof are denied. To the extent the allegations in Paragraph 2 of the Complaint are directed to persons, entities or defendants other than Pfizer, Pfizer is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies those allegations. Pfizer denies the remaining allegations in Paragraph 2 of the Complaint that pertain to it.

3. The allegations in Paragraph 3 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

4. The allegations in Paragraph 4 contain Plaintiff's generalizations and self-serving conclusions. Accordingly, no answer is required and none is made. To the extent an answer is deemed to be required, the allegations are denied and strict proof is demanded thereof.

5. Pfizer admits that some public drug reimbursement systems reimburse physicians and pharmacies based upon the AWP as published and reported by various compendia. hat some public drug reimbursement systems reimburse physicians and pharmacies based upon the AWP as published and reported by various compendia. Pfizer is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations regarding private drug reimbursement and, therefore, denies those



allegations. Pfizer denies the remaining allegations in Paragraph 5 of the Complaint that pertain to it.

6. Denied.

7. Pfizer denies the existence of, and its participation in, any "AWP Inflation Scheme" as alleged in Paragraph 7 of the Complaint. To the extent the allegations in Paragraph 7 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Pfizer, Pfizer is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations. To the extent the allegations of Paragraph 7 contain legal arguments or conclusions of law, no answer is required and none is made. Pfizer denies the remaining allegations in Paragraph 7 of the Complaint that pertain to it.

8. Denied. To the extent the allegations in Paragraph 8 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Pfizer, Pfizer is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.

9. Denied. To the extent the allegations in Paragraph 9 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Pfizer, Pfizer is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.

10. Denied. To the extent the allegations in Paragraph 10 of the Complaint refer to the knowledge, conduct or actions of persons, entities or defendants other than Pfizer, Pfizer is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies those allegations.